

BOARD OF APPEALS CASE NO. 5208

*

BEFORE THE

**APPLICANTS: Salvatore & Belinda Alaimo
and Harford County Government**

*

ZONING HEARING EXAMINER

**REQUEST: Variance to construct a 6 foot
high fence within the front yard;
12 Singer Road, Abingdon**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 4, 2002

*

Record: 1/25/02 & 2/1/02

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Salvatore & Belinda Joy Alaimo and Harford County Government, are requesting a variance, pursuant to Sections 267-24B(1) and 267-24C of the Harford County Code, to construct a fence higher than the required 4 foot in the front yard and within the triangular area of clear vision in an R2 District.

The subject parcel is located at 12 Singer Road, Abingdon, Maryland 21009, in the First Election District, and is more particularly identified on Tax Map 56, Grid Number 4E, Parcel 476, in the subdivision of Preston Manor. The parcel contains approximately 0.789 acres more or less.

The Applicant, Belinda Joy Alaimo, appeared, and testified that she is the co-owner of the subject property, and that she supports construction of the proposed fence. The property is a corner lot with frontages on Singer Road and Silver Spruce Lane. It is improved by a dwelling, a blacktopped drive and a detached garage.

The second witness to testify was Mr. Carlos Smith, a project engineer with the Harford County Department of Public Works. Mr. Smith testified that he was the project engineer for the Singer Road project. That project involved the widening of Singer Road from 20 foot wide to 36 foot wide. According to the witness, the subject property was originally screened by an eight foot high and 29 foot long hedge along the entire front of the property.

Case No. 5208 - Salvatore & Belinda Alaimo /Harford County Government

The road project required removal of the existing screening, and the hedge was removed by the Harford County Department of Public Works during the widening and reconstruction of Singer Road. The Department of Public Works agreed to replace the hedge with a timber privacy fence upon completion of the project. The proposed fence would be 191 feet long, and 6 feet high.

Mr. Smith testified that he had contacted Henry Basta, a traffic engineer with the Department of Public Works, in connection with the location of the proposed fence. Mr. Basta visited the site, and assisted in determining where to construct the proposed fence so that it would not interfere with the triangular area of clear view required at the intersection of Singer Road and Silver Spruce Lane.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by the Department. It found that both the property and the circumstances involved in this request are unique. The subject property is a corner lot which fronts on Singer Road, which is a collector road with significant traffic volume. The house is located only 35 feet from the Singer Road right-of-way. Construction of the requested fence will provide privacy for the Applicants, and cut down on the noise from the traffic on Singer Road. Mr. McClune testified that the Department recommended approval of the subject request in its February 22, 2002 Staff Report. The witness testified that in his opinion the proposed fence will have no adverse impact on adjacent properties. He also stated that the Department of Public Works has determined that the proposed fence “will be located approximately 10 feet back from the right-of-way of Singer Road” and that the “proposed location of the fence will not interfere with clear vision at the intersection of Silver Spruce Lane and Singer Road.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Salvatore & Belinda Joy Alaimo and Harford County Government, are requesting a variance, pursuant to Sections 267-24B(1) and 267-24C of the Harford County Code, to construct a 6 foot high fence within the front yard setback, and within the triangular area of clear vision in an R2 District.

Case No. 5208 - Salvatore & Belinda Alaimo /Harford County Government

Section 267-24B(1) of the Harford County Code states:

“Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

Section 267-24C of the Harford County Code reads:

“Visibility at intersecting roads.

- (1) In order to provide for visibility across lots at intersecting roads, there shall be a triangular area of clear vision on each corner lot. The triangular area shall be formed from a point on each road right-of-way line located twenty (20) feet for local roads, forty (40) feet for collector roads and sixty (60) feet for arterial roads from the intersection of the road right-of-way line which abuts the lot and a third line connecting the two (2) points.**
- (2) On any portion of the lot that lies within the triangular area described above, no obstruction shall be placed in such a manner as to impede vision between a height of two and one-half (2-1/2) feet and ten (10) feet above the grade at the road right-of-way.”**

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

Case No. 5208 - Salvatore & Belinda Alaimo /Harford County Government

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691(1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is a corner lot with two road frontages and, hence, subject to two front yard setbacks. The circumstances involving the subject request are also unique. The Hearing Examiner finds that the request in this case is necessitated by an unusual circumstance which causes the “zoning ordinance to impact more severely on that property than on surrounding properties.” The widening and reconstruction of Singer Road required the removal of an existing hedgerow, thereby depriving the property owners of both privacy, and a natural sound barrier. This project left the existing dwelling sitting only 35 feet from the Singer Road right-of-way. Singer Road is a busy collector road with significant vehicular traffic. The Harford County Department of Public Works agreed, prior to removal of the existing hedgerow, that it would replace the hedge with a 6-foot vertical board privacy fence. Thus, the first prong of the Cromwell test has been met.

It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in an unreasonable hardship in this case. The dwelling located on the subject property is only 35 feet from the right-of-way of a busy collector road. The construction of a 4 foot fence, as permitted by the Harford County Code, would not provide the Applicants with adequate privacy, or an effective sound barrier. The requested 6 foot fence will provide needed privacy, and cut down on traffic noise emanating from Singer Road.

Case No. 5208 - Salvatore & Belinda Alaimo /Harford County Government

Finally, the Hearing Examiner finds that the granting of the requested variance will neither adversely impact, or be substantially detrimental to, adjacent properties, nor will it materially impair the purpose of the Code or the public interest. An engineer from the Harford County Department of Public Works assisted in determining the location of the proposed fence. He indicated that the proposed fence will not interfere with site distance at the intersection of Singer Road and Silver Spruce Lane.

The Hearing Examiner recommends approval of the requested variance.

Date: APRIL 17, 2002

Rebecca A. Bryant
Zoning Hearing Examiner